

# PERSONNEL BOARD

April 19, 2007

## MEETING

Meeting was held Thursday, April 19, 2007, City Council Chambers, County-City Building, Lincoln, Nebraska.

Members present: Maggie Stine, Pat Borer, Ed Wimes. Members absent: Ruth Jones, Sarah Jones. Personnel Department resource staff attending: Karen Eurich.

The meeting was opened at 8:30 a.m. by Chair Ed Wimes.

Agenda Item 1 was the request to change the pay range of classification 1135 Internal Auditor from M01 to M02. Don Taute of the Personnel Department explained this class was created last year and advertised at the M01 pay range. Very few applications were received and the applicants were minimally qualified for the position due to the high qualifications and low pay. The City Council has recently approved a change in the pay range to attract more qualified candidates. Following discussion, it was moved by Maggie Stine and seconded by Pat Borer to approve the pay range amendment as presented. Motion unanimously carried by roll call vote.

Agenda Item 2 was the request for appeal hearing – Robert Oglesby — Public Works/Wastewater. Joe Rupp of the City Attorney's Office represented the City and Thomas Lamb represented Robert Oglesby. The proceedings were recorded by Marcy Konzak of J.S. Wurm and Associates and are on file in that office. There were nine exhibits offered and accepted into the record. Witnesses called: Roger Krull, Pat Kant, Steve Masters, Ed Simpson, William Woodruff, Robert Oglesby. Mr. Lamb objected to the testimony of Ed Simpson as the testimony he was to offer was after Robert Oglesby's termination. The Board ruled that the testimony would not be heard due to being post-termination and Ed Simpson did not testify.

Following closing statements, it was moved by Maggie Stine and seconded by Pat Borer to deny the request for appeal and uphold the dismissal of Robert Oglesby. Motion unanimously carried by roll call vote.

There being no further business the meeting adjourned at 11:30 a.m.

The next scheduled meeting is tentatively set for Thursday, May 17, 2007.

Karen Eurich  
Personnel Operations Specialist

PC: Joan Ross, City Clerk  
Robert Oglesby  
Thomas Lamb  
Joe Rupp  
Karl Fredrickson

BEFORE THE CITY OF LINCOLN PERSONNEL BOARD

IN THE MATTER OF THE APPEAL  
HEARING OF ROBERT OGLESBY

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**DECISION**

NOW, on the 19th day of April, 2007, this matter came before the City of Lincoln Personnel Board on the request for an appeal hearing of Robert Oglesby regarding the termination of his employment as an Utility Equipment Operator II for the City of Lincoln Public Works & Utilities Department. Robert Oglesby was represented by Thomas Lamb, attorney at law, and the City of Lincoln Public Works & Utilities Department was represented by Assistant City Attorney Joe Rupp.

Evidence was introduced, testimony offered by the City and the Appellant, exhibits were submitted, oral arguments were heard, and the matter was submitted to the Board.

Board member Stine moved to deny the appeal, and upon a vote of 3-0, the appeal was denied.

In support of its decision, the Board makes the following findings and conclusions:

1. The Appellant was hired on August 1, 1994 by the City of Lincoln to work in the City of Lincoln Public Works & Utilities Department Wastewater Collection as a Utility Equipment Operator I. The Appellant was continuously employed at Wastewater Collection and during the course of his employment he was advanced to the position of Utility Equipment Operator II.
2. The Appellant's employment as an Utility Equipment Operator II was terminated by the City of Lincoln effective March 12, 2007 as set forth in Exhibit 1, due to his

arrest during on-call duty for violating a protection order with a City cell phone; his omission of convictions on his original application for employment; his leaving work early to avoid service of a protection order from the Lancaster County Sheriff Deputy; his receipt of a protection order on the public streets in a City vehicle; and his falsification of his Employee Time Distribution Sheet.

3. That on November 30, 2006, the Appellant was arrested during his on-call duty for violating a protection order with a City cell phone. The Appellant was unable to receive any emergency calls for Wastewater Collection from the time of his arrest (about 11:30 p.m.) until 7:30 a.m. The Appellant's inability to respond to emergency calls could have resulted in significant damage to private property and exposed the City to liability. Further, the City's cell phone was confiscated by the Lancaster Sheriff's Deputy and has not been returned.

4. That Appellant omitted from his application for employment a conviction on July 14, 1988 for attempted delivery of controlled substance where he was sentenced to 30 days jail and 3 years probation. On the Appellant's application of July 8, 1994, he stated he had not been convicted of a criminal offense other than a minor traffic violation. By signing the application, the Appellant acknowledged that he "Understood that any false information . . . in the application will be sufficient reason for rejection of the application or termination of employment."

5. That on January 8, 2007, a Lancaster County Sheriff Deputy attempted to serve Appellant with a protection order at the Wastewater facility. The Appellant left the work place early to avoid service. Appellant's supervisor made contact with the Appellant by cell phone and Appellant declined to return to the work site. The following day, Appellant was stopped in a City vehicle and served a protection order around 37<sup>th</sup> and Calvert Streets. That avoidance of a protection order is conduct unbecoming a City employee. The service of a

protection order to a City employee in a City vehicle on a public street is a disruption in the workplace and an embarrassment to the City.

6. That Appellant falsified his Employee Time Distribution Sheet for the pay period of January 11, 2007 through January 24, 2007. On January 10, 2007, Appellant made a verbal request to his supervisor Roger Krull for 2 hours of vacation to meet with his attorney on January 11, 2007. Appellant intentionally submitted a leave request form and Employee Time Distribution Sheet that reflected 2 hours of sick leave during the same time period.

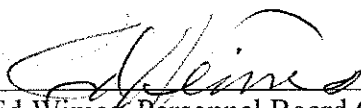
7. A pre-disciplinary meeting was held on December 11, 2006, to discuss Appellant's arrest during on-call duty. A pre-disciplinary meeting was held on February 22, 2006, to discuss Appellant's avoidance of protection order; receipt of a protection order in a City vehicle; omission of criminal conviction from Appellant's application; and falsification of Appellant's Time Distribution Sheet. Appellant was present and represented at both pre-disciplinary meetings.

8. Based upon the evidence in record, the Board concludes that (a) the City has met all the procedural steps necessary to justify the termination of Appellant's employment; and (b) there is substantial evidence to establish that the disciplinary action taken by the City in the nature of termination of the Appellant's employment was for cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appeal of the termination of the employment of Robert Oglesby be and the same is hereby denied.

Dated this 30<sup>th</sup> day of April, 2007.

CITY PERSONNEL BOARD

By:   
Ed Wimes, Personnel Board Chair